



Date: March 14, 2013

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Reginald Johnson, Director, Community Development
Subject: Adopt a Resolution Approving a Revision to the City's Right of Re-entry for 1406 Morning Glory Avenue, 1408 Morning Glory Avenue, 1504 Morning Glory Avenue, 115 N. Goley Street and 118 N. Goley Street as conveyed to Development Ventures Incorporated (a non-profit instrumentality of the Housing Authority of the City of Durham), for the Goley Pointe development

Executive Summary

Development Ventures Incorporated ("DVI") and the Housing Authority of the City of Durham ("DHA") wish to construct 20 units of affordable multifamily rental housing that will be known as the Goley Pointe development ("Goley Pointe"). Twelve of the 20 units will serve homeless families. The site will be comprised of 4 one-, 9 two- and 7 three-bedroom units that will serve families at up to 80% of the area median income limit for Durham. DVI will serve as the developer. The project will be owned by Goley Pointe, LLC, which is a North Carolina limited liability company, with Development Ventures Incorporated as its sole member and manager. The lots were re-platted and recombined, and now require single ownership by Goley Pointe, LLC.

On January 24, 2008, the City Council authorized the Mayor to convey 1406 Morning Glory Avenue, 1408 Morning Glory Avenue, 1504 Morning Glory Avenue, 115 N. Goley Street and 118 N. Goley Street (the "Property") by non-warranty deed (the "Deed") to DVI. In the Deed, the City reserved the right to re-enter and take possession of the Property, if DVI did not have "low to moderate income persons living on the Property in a facility developed as part of the Housing 400 Initiative, or as part of a project similar to the Housing 400 Initiative meant to benefit the homeless", three (3) years from June 9, 2009.

The development will utilize financing through Self Help Credit Union's Neighborhood Stabilization Program; North Carolina Housing Finance Agency's Supportive Housing Development Program; Turnkey III, Capital funds and Replacement Housing Factor Funds from DHA, Continuum of Care funds from the U.S. Department of Housing and Urban Development, and funds from Development Ventures Incorporated.

The Community Development Department recommends that the City Council adopt the resolution authorizing the execution of an amendment to the Deed that would extend the City's right of re-entry until December 31, 2013 instead of June 9, 2012, and have the right of re-entry to terminate upon the issuance of building permits for the construction of Goley Pointe.

Recommendation

The Community Development Department recommends that the City Council adopt the resolution authorizing a revision to the City's right of re-entry associated with the Property necessary for Goley Pointe.

Background

DVI and DHA request that the City adopt a resolution authorizing a revision to the City's right of re-entry that the City maintained in a deed conveying five (5) lots to DVI in a deed, as recorded in Book 6242, Page 111, Durham County Register of Deeds.

In the Deed, the City reserved the right to re-enter and take possession of 1406 Morning Glory Avenue, 1408 Morning Glory Avenue, 1504 Morning Glory Avenue, 115 N. Goley Street and 118 N. Goley Street (the "Property"), if DVI did not have "low to moderate income persons living on the Property in a facility developed as part of the Housing 400 Initiative, or as part of a project similar to the Housing 400 Initiative meant to benefit the homeless", three (3) years from June 9, 2009. If this condition was not satisfied, the City reserved the right re-enter and retake title to the Property. To date the City has not exercised its right of re-entry to the Property.

In 2008, DVI applied for funding from the North Carolina Housing Finance Agency to construct a development that would be part of the 400 Initiative that was geared toward the homeless population in Durham. DVI did not receive the necessary funding approval for the 400 Initiative development.

DVI has since obtained approval for all necessary financing to construct the development, as noted above.

DVI has created Goley Pointe, LLC to serve as the owner of the Goley Pointe development. However, the City's right of re-entry is an encumbrance on title to the Property and does not allow Goley Pointe, LLC to provide any lender with a lien on the Property with the City maintaining a right of re-entry that could be exercised by the City, at any time and in the City's discretion.

Issues and Analysis

The right of re-entry that the City maintained in the Deed establishes an encumbrance (i.e., a cloud on title), which prevents Goley Pointe, LLC, as the ultimate owner of the Property, from granting a deed of trust to any prospective lender to the fact that the City could exercise its right to re-enter and take title to the Property, because the City's right to re-enter and take possession of the property became effective as of June 9, 2012 and remains in effect.

Currently, Goley Pointe, LLC has obtained approval from Self Help Credit Union and North Carolina Housing Finance Agency for funding for construction financing and permanent financing, respectively, for the development of the Goley Pointe. However, the right of re-entry on the Property needs to be addressed.

DVI, as the current owner of the Property, respectfully requests that the City approve the execution of an amendment to the Deed that would extend the City's right of re-entry until December 31, 2013 instead of June 9, 2012 and have the right of re-entry to terminate upon the issuance of building permits for the construction of Goley Pointe.

The extension of City's right of re-entry until December 31, 2013 and the expiration of the right of re-entry upon the issuance of building permits would allow Goley Pointe, LLC to provide a deed of trust on the Property to Self Help Credit Union and North Carolina Housing Finance without an encumbrance on title and without the concern that the City can exercise its right of re-entry, at its sole discretion, and have the Property re-conveyed to the City without the development being completed.

The City Council's approval , to termination of the right of re-entry and extension of the City's time frame to exercise the right of re-entry would allow the transaction to close and start the construction of providing additional affordable housing to the City of Durham, which was the ultimate intent of the City by reserving a right of re-entry for the Property.

Alternatives

If the City should choose not to authorize a revision to the right of re-entry and the ultimate termination of the right of re-entry, this would, in effect, prevent Goley Pointe, LLC from financing the transaction utilizing Self Help's Neighborhood Stabilization Program funds and funds from North Carolina Housing Finance Agency and prevent Goley Pointe, LLC from providing much needed affordable housing in the City of Durham.

Financial Impact

The adoption of this resolution has no fiscal impact on the City.

SDBE Summary

N/A

Attachments

None.